IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.545 OF 2007

Shri Antim Bhagwandas Totla, aged 36 years adult, of Bombay, Indian Inhabitant, residing at 6th Floor, Li-Orchid Apartment, 15th Road, Khar, Mumbai-400 052. (at present Thane Central Jail.) ..Petitioner.

Versus

1. Rashmi P. Karandikar, Dy. Superintendent of Police, Ganeshpuri, District : Thane.

2. Mr.Ramnath Pokale, Addl.Superintendent of Police, Vasai, District : Thane.

3. Dr.Satyapal Singh, Inspector General of Police, Konkan Region.

4. The State of Maharashtra, through Wada Police Station, Dist.Thane, vide C.R.No.II-13 of 2006.

5. The State of Maharashtra, Public Prosecutor, High Court, Mumbai. ..Respondents.

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ALONG WITH

CRIMINAL WRIT PETITION NO.1519 OF 2007

Shri Prakash Shivchand Jakhete, aged 45 years adult, of Bombay, Indian Inhabitant, residing at 601, Anand House, 8th Road, Khar (W), Mumbai-400 052. ..Petitioner.

Versus

1. Rashmi P. Karandikar,]
   Dy. Superintendent of Police,]
   Ganeshpuri, District : Thane.]

2. Mr.Ramnath Pokale,]
   Addl.Superintendent of Police,]
   Vasai, District : Thane.]

3. Dr.Satyapal Singh,]
   Inspector General of Police,]
   Konkan Region.]

4. The State of Maharashtra,]
   through Wada Police Station,]
   Dist.Thane, vide C.R.No.II-13 of]
   2006.]

5. The State of Maharashtra,]
   Public Prosecutor, High Court,]
   Mumbai.] ..Respondents.

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Mr.Shrish Gupte, Sr. Counsel with Mr.Mohan Tekavde, Mrs.Swati M. Tekavde, Mrs.Rachita Dhuru, Miss.Damini Rasal and Mr.Sachin Dere, Advs. for the Petitioners.

Mrs.U.V.Kejariwal, APP, for the State.

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CORAM : R.M.S.KHANDEPARKAR AND SMT.V.K.TAHILRAMANI,JJ.

DATED : OCTOBER 09, 2007.

ORAL JUDGMENT : (PER R.M.S.KHANDEPARKAR,J.)

1. In both these Petitions common question of law and facts arises and hence they were heard together and are being disposed of by this

common judgment.

2. In both these Petitions, the petitioners challenge the legality and propriety of the sanction granted by the competent authority for recording of FIR for the offences alleged to have been committed under the Maharashtra Control of Organised Crime Act, 1999 (hereinafter called as "MCOCA") and consequently for quashing of all the proceedings against the petitioners initiated pursuant to recording of FIR No.II-13 of 2006 under Sections 3(1)(ii), 3(2), 3(4) of MCOCA registered at Wada Police Station, Thane.

3. The limited ground of challenge is that the petitioners are sought to be prosecuted for the alleged offence under MCOCA solely on the ground that they have evaded crores of sales tax by way of manipulation of accounts thereby claiming therein sales of naphtha, kerosene etc. in favour of non-existing and non-functioning companies. Reliance is sought to be placed in the decision of the Apex Court in the case of

State of Maharashtra & Others Vs. Lalit Somdatta Nagpal and Another reported in **(2007) 4 Supreme Court Cases 171**, in support of the contention that even assuming that the petitioners were involved in evasion of sales tax, that would not attract the provisions of MCOCA.

4. Perusal of the records and more particularly the affidavit filed by the Additional Superintendent of Police, Vasai namely Shri.Ramnath Laxmanrao Pokale in Writ Petition No.545 of 2007, the same discloses that the proceedings were sought to be initiated under MCOCA consequent to information revealed to the investigating authorities about evasion of crores of rupees sales tax by the petitioners which was revealed in the course of inquiries conducted by the Sales Tax Officers. It is specifically stated in the affidavit that Rajesh Pranlal Ghataliya, Bhaskar Shantilal Desai (deceased), Antim Bhagwandas Totla, Naresh Balwantrai Vora and Nitin Balvantrai Vora formed organised crime syndicate and imported various

products including naphtha, kerosene etc. in the name of M/s. Shiva Organics India Ltd., M/s.Progressive Petroleum Co. Ltd., and M/s.Paradise Petrochem Pvt. Ltd., and sold the same to various bogus, dummy and non-functioning companies as well as some other persons who were using kerosene, naphtha for adulteration, and for that purpose prepared forged and false documents for disposal of the said products and thus earned pecuniary benefits while defaulting the Government treasury in relation to their liability to pay the sales tax. It is further stated in the affidavit that the Sales Tax Officers of Mumbai Sales Tax Office inquired about the transactions and it was revealed to them about the non-existing companies and alleged forgery and cheating by the said accused persons in relation to the sales tax to the Government. It is further case of the respondent that the Assistant Commissioner of Sales Tax, Mazgaon, on assessment of M/s. Progressive Petroleum Co. Ltd. found that the company had evaded sales tax to the tune of Rs.18,62,70,717/-, as also M/s. Paradise

Petrochem Pvt. Ltd. had evaded sales tax to the tune of Rs.15,94,12,339/-, M/s.Shiva Organics India Ltd., had evaded sales tax to the tune of Rs.11,96,86,395/-, so also other companies. It is their further case that they had collected about 123 different bank account statements in the name of the petitioners and dummy, bogus and non-existing companies, which establish the evasion of the sales tax. As regards the other alleged illegal activities like adultering raw material of petroleum, it is the contention on behalf of the respondent that the investigation is in progress. However, as far as the present FIR is concerned, it is undisputed fact that the same is based solely on the ground of evasion of sales tax by the petitioners and there is no other offence disclosed as basis for applying provisions of MCOCA.

5. The Apex Court in the case of **Lalit Somdatta Nagpal** (supra) had clearly ruled that in respect of an offence under Section 63 of the Sales Tax Act, it would not attract the

provisions of MCOCA. There is a clear ruling to that effect in paragraph Nos.64 & 65 of the said decision.

6. It is not in dispute, as it has been candidly admitted by the learned APP that while evasion of sales tax in relation to the petitioners would attract offence under Section 63 of the Sales Tax Act. Obviously, therefore the case of the petitioners is fully covered by the decision of the Apex Court in the case of **Lalit Somdatta Nagpal** (supra). Since the impugned FIR is solely on the basis of evasion of sales tax, which would warrant proceedings in terms of Section 63 of the Sales Tax Act and as that would not attract the provisions of MCOCA, the impugned FIR cannot be sustained and for the same reason all subsequent proceedings as well as sanction granted for registering of the said FIR also cannot be sustained.

7. In the result, therefore, the Petitions succeed on the limited ground stated above. Therefore rule is made absolute in terms of

prayer clause (b) in both the Petitions, with no order as to costs.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]